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No.

In the Supreme Court of the United States

Barbara Doran,
Petitioner

v.

Carnival Corporation d/b/a Carnival Cruise Lines,
Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case arises from personal injuries sustained by your petitioner, Barbara Doran, aboard a cruise ship. The action was filed in the United States District Court located approximately ten blocks from the vessel's berth in her home port of New Orleans, Louisiana. New Orleans is the only domestic port of call for the vessel at the present time and at the time of the filing of the suit. The trial court recognized that the vessel's crew could only be subject to trial subpoenas issued from that court.

On the date of the vessel's departure, prior to boarding the vessel, the passenger was presented with a "Guest Ticket Contract" containing a forum selection clause virtually identical to the one at issue in the case of *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991). Both the trial court and the appellate court held that the clause was part of a maritime contract and therefore enforceable although no notice of the forum selection clause was ever provided to the passenger prior to the date of the vessel's departure or at the time that the ticket was purchased. Furthermore, at the time that notice was first provided to the passenger and at all times subsequent to the purchase of the ticket, she was subject to a cancellation penalty.

The questions presented for review are:

I. DOES THIS COURT'S DECISION IN *THE MAJESTIC* PREVENT THE ENFORCEMENT OF A FORUM SELECTION CLAUSE CONTAINED IN A PASSENGER TICKET THAT IS NOT A MARITIME

CONTRACT BETWEEN THE PARTIES TO THE LAWSUIT?

2. DOES THIS COURT'S DECISION IN *CARNIVAL CRUISE LINES v. SHUTE* PERMIT A CRUISE LINE TO ENFORCE LIMITATIONS CONTAINED IN A PASSENGER TICKET THAT RESTRICT THE RIGHTS OF A PASSENGER WHILE CONCURRENTLY IMPOSING A PENALTY UPON THE PASSENGER WHO FAILS TO CONSENT TO THE TERMS OF THE TICKET?

3. DOES THIS COURT'S DECISION IN *CARNIVAL CRUISE LINES v. SHUTE* ALLOW FOR A PASSENGER'S PERSONAL INJURY ACTION TO BE BROUGHT IN THE VESSEL'S HOME PORT AND ONLY DOMESTIC PORT OF CALL WHERE THE VESSEL'S CREW ARE NOT SUBJECT TO TRIAL SUBPOENAS IN THE FORUM DESIGNATED BY THE FORUM SELECTION CLAUSE?

4. DOES THIS COURT'S DECISION IN *CARNIVAL CRUISE LINES v. SHUTE* PRECLUDE A VENUE ANALYSIS OF FORUM SELECTION CLAUSES IN ACCORDANCE WITH THE FACTORS SET FORTH IN *STEWART ORGANIZATION INC. V. RICOH*?

LIST OF PARTIES

All parties to this litigation are named and identified in the caption of this petition.

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2000

Barbara Doran,
Petitioner

v.

Carnival Corporation d/b/a Carnival Cruise Lines,
Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

Barbara Doran respectfully petitions for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The United States Court of Appeals for the Fifth Circuit did not issue a published opinion in this case pursuant to Rule 47.5 of the Local Rules for the United States Court of Appeals for the Fifth Circuit. The ruling of the trial court is also not reported. Both decisions have been reprinted in the appendix attached hereto.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its judgment on May 3, 2000. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(l).

FEDERAL PROVISIONS INVOLVED

This case concerns legal issues arising under the general maritime law relating to the enforcement of terms contained in a vessel passenger ticket. The decisions of the lower courts have created a conflict between two decisions of this Court, *The MAJESTIC*, 166 U.S. 375 (1897) and *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991).

STATEMENT OF THE CASE

Petitioner, Barbara Doran, suffered personal injuries while traveling aboard a passenger vessel operated by Carnival. She brought suit against Carnival in the United States District Court for the Eastern District of Louisiana invoking both diversity and admiralty jurisdiction. As a precautionary matter, she also filed suit in the United States District Court for the Southern District of Florida within the time period contained in her passenger ticket in the event that her challenge to the forum selection clause was unsuccessful.

Carnival operated the Liberian flagged vessel M/V CELEBRATION from her home port of New Orleans. The Port of New Orleans is also where the passenger had obtained her ticket and boarded the vessel on the date of the

vessel's departure. It is also significant that at the present time, New Orleans is the vessel's only port of embarkation and debarkation, as well as the vessel's only port of call located in the United States. The trial court noted that federal trial subpoenas for the vessel's crew could only be issued in the Eastern District of Louisiana.

Carnival objected to the venue of a lawsuit that was brought in a federal court located approximately ten blocks from where the cruise ship docks. Therefore, Carnival sought dismissal of the case based upon the enforcement of a forum selection clause that was incorporated into the passenger ticket issued to the petitioner. Carnival filed a motion to dismiss for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3). Alternatively, Carnival requested that the venue be transferred to the United States District Court for the Southern District of Florida.

In support of the motion, Carnival relied exclusively upon the forum selection clause contained in the passenger ticket contract and this court's decision in *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991). The trial court found that the clause was enforceable in accordance with *Shute* and dismissed the action. The appellate court affirmed the trial court's holding. The passenger is now seeking a writ of *certiorari* in order to recognize that there should be limitations placed upon the enforcement of forum selection clauses in passenger tickets and that these tickets do not impose any independent obligations upon the passenger unless they are part of a maritime contract.

Indeed, the forum selection clause is entirely incon-

sistent with the general maritime law of contracts as pronounced by this Court in *The MAJESTIC*, 166 U.S. 375 (1897). In particular, the forum selection clause was not a part of any maritime contract between the parties at the time that passage aboard the vessel was booked and therefore it is unenforceable. By virtue of affidavits submitted by Carnival, the record irrefutably establishes that no notice of the clause was ever provided to the passenger until the date of boarding. Furthermore, subsequent to the purchase of the ticket, the passenger was subject to a cancellation fee if she refused to acquiesce in the terms and conditions of the ticket.

The passenger also submits that the enforcement of the forum selection clause was not mandated by *Carnival Cruise Lines, Inc. v. Shute*. The *Shute* decision has been misinterpreted by the lower courts resulting in automatic enforcement of the forum selection clause in cases where the policies underlying the *Shute* decision are entirely absent. Indeed, by requiring that this case be brought in Miami, Florida, a venue entirely lacking in any significant contact with the instant claim for personal injuries, the enforcement of the forum selection clause is fundamentally unfair and clearly constitutes overreaching on the part of the vessel operator.

The clause is also fundamentally unfair, overbearing and unreasonable by virtue of the fact that provisions restricting the rights of the passenger are placed in the ticket which is not given to the passenger until after the purchase price has been paid. Contrary to the holdings of the lower courts, a full refund for cancellations is only available if the

cancellation is made more than seventy days before the vessel's departure. R.D. No. 15, Ex. A, p. 33. Therefore, the clause is fundamentally unfair, unreasonable and the result of overreaching on the part of Carnival as it restricts the passenger's rights subsequent to the formation of any maritime contract and is only provided to the passenger after the ticket has been purchased.

REASONS FOR GRANTING THE PETITION

1. The Decision of the Fifth Circuit is in Conflict with the Decision of this Court in *The MAJESTIC*, 166 U.S. 375 (1897) as it Permits Enforcement of Provisions in a Passenger Ticket that are not a Part of the Contract of Passage

Both the trial court and the appellate court held that the passenger ticket presented to Ms. Doran immediately prior to boarding the vessel constituted a maritime contract between the parties. In support of this legal conclusion, the lower courts cited to the case of *Carnival Cruise Lines, Inc. v. Shute*. It is respectfully submitted that this is an incorrect interpretation of the *Shute* decision. More importantly, it is in express conflict with this Court's ruling in the case of *The MAJESTIC*, 166 U.S. 375 (1897).

A ticket generally constitutes only a receipt for the passenger's fare, although in certain circumstances it may also serve as a contract or evidence of a contract. *Block v. Compagnie Nationale Air France*, 386 F.2d 323, 336 (5th Cir. 1967); *Alaska Airlines, Inc. v. Austin*, 801 F. Supp. 760, 769 (D.D.C. 1992); 13 C.J.S. *Carriers* §499b. This propo-

sition was specifically incorporated into the general maritime law in reference to vessel passenger tickets by this Court's decision in *THE MAJESTIC*. In *The MAJESTIC*, a limitation of liability provision printed on the back of a passenger ticket was held to be unenforceable because it had not been contained within the actual contract for passage. *THE MAJESTIC*, 166 U.S. at 381.

This rule of the general maritime law was not effected by the subsequent decision in *Shute*. The *Shute* decision expressly refused to address the issue of the passenger's notice of the terms and conditions contained in the ticket at the time that the contract was formed. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. at 590. This was because the passengers had conceded that they did have adequate notice of the forum selection clause at the time of contract formation. *Id.* The *Shute* court therefore allowed for enforcement of the clause because the passengers had notice of the clause before they entered into the contract of passage and it was thus presumed that the clause could be rejected by the Shutes "with impunity" at the time of contract formation. *Id.*

The lower courts' decisions therefore fail to recognize that in order for the ticket to constitute a binding contract between the parties, its terms and conditions must be made known at the time that the contract is formed or otherwise incorporated into the contract by reference at the time of contract formation. *THE MAJESTIC*, 166 U.S. at 385; *see also*, Annot. 5 A.L.R. Fed 394, 409-12(Federal View as to Effect of Conditions Appearing on Back of Passenger's Ticket for Ocean Voyages, §4b). Under the general maritime law of contracts, if additional terms are to be added to the

contract, these terms must be supported by separate consideration. *United States v. Waterman S.S. Corp.*, 471 F.2d 186, 189 (5th Cir. 1973); *See generally*, 3WILLISTON ON CONTRACTS §7:36 (4th ed. 1992); RESTATEMENT OF CONTRACTS (2nd) §73 (1981). In this case however, the forum selection clause and other restrictive terms and conditions of the ticket were not supported by additional consideration. Instead, the very same ticket informed the passenger well after the contract of passage had been formed that she would forfeit her fare if she did not board the vessel upon the date of departure.

Accordingly, the lower courts committed error in enforcing the forum selection clause against the claims of Barbara Doran. This error arises from the failure to recognize that the clause was unenforceable under this Court's decision in *The MAJESTIC*. As a consequence, there is a real and direct conflict with a prior decision of this Court on a federal question that satisfies the requirements for the issuance of a writ of *certiorari* as set forth in Rule 10(c) of the Rules of the Supreme Court of the United States. This Court should therefore grant a writ of *certiorari* in order to establish definitively that a forum selection clause and any other restrictive language contained in a passenger ticket do not have any legal effect unless they are contained within an enforceable maritime contract.

II. This Case Presents Important Questions Concerning the Scope and Application of *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991) and the Procedures to be followed by a Trial Court in Enforcement of a Forum Selection Clause contained in a Passenger Ticket

Even if this Court finds that there is no conflict presented with its decision in *The MAJESTIC*, a grant of a writ of *certiorari* is warranted in this case pursuant to Rule 10(c) of the Supreme Court Rules as the case presents an important question of federal law. More specifically, this case presents a rare opportunity for this Court to revisit and refine its holding in *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991). The *Shute* decision was very limited in its scope and should not be extended to cases where the policy reasons in support of the clause's enforcement are absent.

It must be remembered that in *Shute*, the Supreme Court was only called upon to review the holding of the United States Court of Appeals for the Ninth Circuit that the forum selection clause was unenforceable. This Court was very careful to note the limitations placed upon the scope of its inquiry. *Carnival Cruise Lines v. Shute*, 499 U.S. at 590. The decision rejected the passenger's single challenge to the clause, based upon inconvenience, because it was unsupported by the record. *Id.*

Respectfully, it must also be recognized that the *Shute* decision has been a heavily criticized decision that was decided on the basis of improvident stipulations and an inadequate record. *See generally*, Jarvis, 10 BENEDICT ON ADMIRALTY, § 4.02 (commentary has been generally

unfavorable); Taylor, *The Forum Selection Clause: A Tale of Two Concepts*, 66 Temp. L. Q. 785, 849 n. 382 (1993)(commentators have uniformly criticized the court's reasoning). Lower courts have interpreted *Shute* to require virtually automatic enforcement of forum selection clauses and other provisions contained in the passenger ticket that restrict the rights of the passengers. Due to the recent and increasing popularity of cruise ship travel, the holding in *Shute* requires a more thorough analysis particularly in light of the uncritical and broad effect that the decision has had in the litigation of passengers' claims. There are several issues in the *Shute* decision that require further examination by this Court.

For example, *Shute* recognized that the decision in *The BREMEN v. Zapata Corporation,* 407 U.S. 1 (1972) was the starting point for the enforcement of a forum selection clause and that the realities of non-negotiated form passage contracts required a refined *BREMEN* analysis. *Id.* at 593. However, *Shute* did not go any further than this in defining the refined *BREMEN* analysis. Indeed, it was expressly held that key factual differences between the passenger ticket and the *BREMEN* towing contract precluded "an automatic and simple application of *The BREMEN's* general principles to the facts *Id.* at 591. Nonetheless, as was done in this case, the lower courts have consistently required the passenger to meet the *BREMEN* test and demonstrate that the forum was so inconvenient that it effectively deprives the passenger of their day in court, R.D. No. 16, p. 4, although Ms. Doran did not seek to avoid enforcement ofthe forum selection clause on the mere grounds of inconvenience.

Shute suggested several exceptions to the forum

clause's enforcement that are also present in this case. *Shute* recognized that all forum selection clauses were subject to judicial scrutiny for fundamental fairness, *Id.* at 595, an issue not raised by the passenger in *Shute*. Thus, the issue of fairness raised in *dicta* in *Shute* has never been expressly addressed by this Court.

The petitioner has initially challenged the forum selection clause as unfair by not providing the passenger with notice of restrictive conditions until after the ticket had been purchased and the passenger was subject to a cancellation penalty. It is the imposition of the forum selection clause concurrently with the penalty cancellation provision that is fundamentally unfair and constitutes overreaching on the part of the cruise-ship operator. This issue was not passed upon by the *Shute* court due to the passenger's stipulations.

The issue of fairness is also raised by the passenger's arguments that a forum selection clause should not be enforced in a vessel's home port. This argument addresses another exception to the enforcement of the terms of the ticket that was suggested in *Shute* which is that a forum selection clause should not be enforced if a case is inherently more suited for resolution in a forum other than the designated forum. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. at 594. In this case, the passenger is attempting to create a home port/port of embarkation exception under the general maritime law that provides the passenger with access to trial evidence that would be unavailable in the designated forum.

It must be recognized that New Orleans is a potential forum for Carnival simply by virtue of the fact that it operates a cruise vessel from this port. Carnival is thereby exposed to a variety of potential suits for maritime torts and contracts in New Orleans. Simply because of the forum selection clause contained in the passenger's ticket, only passengers are deprived of this forum that is available to every other person damaged by the operation of M/V CELEBRATION.

Thus, a home port/port of embarkation exception serves an important function under the general maritime law in affording compulsory process that is otherwise unavailable by the nature of maritime operations. Indeed, international treaties generally allow for suit to be brought in a vessel's port of embarkation. Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, Dec. 13, 1974, Art. 17. Although the United States is not a signatory nation to this treaty, there is no compelling reason for a Panamanian corporation operating a Liberian flagged vessel from New Orleans to escape the trial court's subpoena power through the enforcement of the forum selection clause.

Finally, this case allows this court to reconcile *Shute* and the refined *Bremen* analysis with its procedural treatment of forum selection clauses in diversity cases. In *Stewart Organization, Inc. v. Ricoh Corporation*, 487 U.S. 22 (1988), it was held that a forum selection clause was not dispositive in determining whether a trial court should maintain venue over an action. *Stewart Organization, Inc. v. Ricoh*, 487 U.S. at 31. Under federal procedural law in a diversity case, a forum selection clause is only one of

several factors to be examined in determining which venue is proper for an adjudication of the case. *Id.* at 33.

According to a *Stewart* analysis, the inability to subpoena trial witnesses would be grounds alone for refusing to enforce the forum selection clause because the ability to obtain live trial testimony through the use of compulsory process is the most important factor to be considered. 15Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* §3851 (2d 1986). Thus, under the *Stewart* approach, the enforcement of a forum selection clause is a procedural issue. In the absence of a maritime contract, a trial court is free to exercise its discretion and resolve the issue as a procedural matter in accordance with *Stewart*. Accordingly, this case provides this Court with the opportunity to reconcile the *Shute* decision with its prior holding in *Stewart Organization, Inc. v. Ricoh.*

CONCLUSION

As a result of transoceanic air travel, vessel passenger travel declined from 1958 to 1980 which in turn diminished the significance of cruise ship litigation as a part of the general maritime law. 10BENEDICT ON ADMIRALTY, §1.02. More recently, the cruise ship industry has enjoyed spectacular growth carrying millions of passengers a year from American ports aboard foreign flagged vessels. *Ibid.* As a consequence of these flags of convenience, federal legislation is often ineffective in protecting passengers who travel aboard these vessels.

It is necessarily incumbent upon the federal judiciary

to protect the rights of the passenger through the development of a body of general maritime law applicable to cruise ship litigation. It is therefore imperative that this Court reassert the rule of contract law established in its decision in *The MAJESTIC*. Uniformity is critical because cruise ships depart from ports throughout the United States that are located in various judicial circuits.

This case is of particular significance because of its unique posture as noted by the trial court. There are few cases available for review by this Court, since most trial courts simply transfer the venue of the case and thereby preclude appellate review. It is therefore respectfully submitted that this case presents this Court with an important opportunity to develop the general maritime law in respect to cruise ship litigation by exercising jurisdiction through a writ of *certiorari*.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED
MAY 03 2000

No. 99-31042
Summary Calendar

BARBARA DORAN,
Plaintiff-Appellant,

versus

CARNIVAL CRUISE LINES, INC.,
Defendants,

CARNIVAL CORPORATION, (erroneously sued as Carnival Cruise Lines, Inc.),
Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(99-CV-800-F)

Before SMITH, BARKSDALE, and PARKER, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Regarding the dismissal of Barbara Doran's personal injury action, at issue is the enforceability of a forum selection clause in a cruise passenger's ticket. We **AFFIRM**.

Doran, a resident of Canada, purchased a ticket on 26 March 1998 for a one week cruise aboard Carnival's ship, the M/V CELEBRATION. Pursuant to a contract with the National Film Board of Canada, Doran was preparing a documentary on "romance" novels, the cruise's theme.

Doran received the ticket upon boarding the ship in New Orleans, Louisiana, on 17 April 1998. She had the option of receiving it earlier. It included a forum selection clause identical to that upheld in ***Carnival Cruise Lines, Inc. v. Shute***, 499 U.S. 585 (1991), requiring litigating all disputes in Florida.

During an outdoor reception, Doran was struck by a falling metal pole. She filed suit in the Eastern District of Louisiana. Carnival moved to dismiss for improper venue, contending the forum selection clause required venue in Florida.

The district court granted Carnival's motion and dismissed the action. It held: (1) the ticket is a maritime contract governed by maritime law; (2) forum selection clauses are *prima facie* valid; and (3) Doran failed to prove enforcement of the clause was either unfair, unreasonable, a result of fraud or overreaching, or deprived her of her day in court.

We review the enforceability of a forum selection

clause *de novo*. ***Mitsui & Co. (USA), Inc. v. Mira M/V***, 111 F.3d 33, 35 (5th Cir. 1997).

A forum selection provision in a written contract is *prima facie* valid and enforceable unless the opposing party shows enforcement would be unreasonable. ***M/S Bremen v. Zapata Off-Shore Co.***, 407 U.S. 1, 10 (1972). The presumption may be overcome by showing the provision is unreasonable under the circumstances. **Id.**

"The burden of proving unreasonableness is a heavy one, carried only by a showing that the clause results from fraud or overreaching, that it violates a strong public policy, or that enforcement of the clause deprives plaintiff of his day in court." ***Mitsui***, 111 F.3d at 35 (citation omitted) . Essentially for the reasons stated by the district court, the dismissal was proper. ***Doran v. Carnival Cruise Lines, Inc.***, No. 99-800 (E.D. La. 27 Aug. 1999).

AFFIRMED

APPENDX B

FILED
Aug 26' 99

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

BARBARA DORAN	*	CIVIL ACTION
VERSUS	*	NO. 99-800
CARNIVAL CRUISE LINES, INC.	*	SECTION "F"

ORDER AND REASONS

Before the Court is defendant's Motion to Dismiss and/or Transfer and For Sanctions. For the reasons that follow, the motion to dismiss is GRANTED and the motion for sanctions is DENIED.

Background

The plaintiff, Barbara Doran, filed this lawsuit on March 10, 1999, seeking damages for personal injuries she suffered while on a cruise ship owned and operated by defendant Carnival Cruise Lines, Inc. On April 17, 1998, the plaintiff boarded Carnival's ship the M/V CELEBRATION for a one week cruise, the theme of which was centered upon romance novels. The plaintiff was sailing on this particular cruise because she had been commissioned by the National Film Board of Canada to prepare a documentary on the subject of romance novels. During the filming of an outdoor

reception, the plaintiff was injured when a metal pole was blown off the deck above her and hit her in the head. As a result of the accident, she sustained a fracture to a bone which caused a cervical disc injury and tendinitis in her shoulder. The defendant now moves under Rule 12(b) (3) to dismiss this matter for improper venue on the basis of a forum selection clause, or, in the alternative, to transfer this lawsuit the United States District Court for the Southern District of Florida.

I. Motion to Dismiss

A passenger ticket for an ocean voyage is a maritime contract governed by general maritime law, Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991). In general, forum selection clauses are deemed to be *prima facie* valid and should be enforced unless shown to be unreasonable under the circumstances. M/S Bremen v. Zapata Offshore Co., 407 U.S. 1, 10, 92 S. Ct. 1907, 1913, 32 L.Ed.2d 513 (1972). Forum selection clauses will be enforced unless the provision was procured by fraud or enforcement would be unreasonable or unjust. Id. The burden of proof for a party seeking to avoid a contractual forum selection clause is a heavy one: "[I]t should be incumbent on the party seeking to escape his contract to show that trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court." 407 U.S. at 18, 92 S. Ct. at 1917.

The plaintiff first asserts that the forum selection clause is unenforceable because it was obtained by over-

reaching on the part of Carnival. Specifically, the plaintiff argues that the enforcement of the clause in her situation would be unreasonable because she had no opportunity to reject the ticket without forfeiture of her fare. The Court is not persuaded.

The plaintiff invokes Corna v. American Hawaii Cruises, 794 F. Supp. 1005 (D. Haw. 1992) as support for her argument. In Corna the trial court refused to enforce a forum selection clause on the ground that the forum selection clause would operate unfairly because the plaintiffs had no opportunity to reject their tickets without forfeiting their entire fare. Id. at 1011-12. The Corna case, however, can be easily distinguished from the present case. The plaintiffs in Corna were standby passengers who booked their trip at the last minute and could not have received their tickets earlier. In addition, it would have been impossible for the plaintiffs to comply with the cancellation policy without forfeiting their entire fare because they only received their tickets two to three days before departure.[1] To the contrary, Ms. Doran was not a standby passenger. She booked and paid for her ticket more than three weeks prior to the date of departure. [1] Moreover, she does not claim that she was prevented from obtaining her tickets or information regarding its terms at an earlier date. The plaintiff chose to wait to pick up her tickets at the time of departure. See Hicks v. Carnival Cruise Lines,

[1] The standard passenger ticket requires that the passenger cancel four days or more from the date of sailing, otherwise the passenger's entire fare is forfeited.

Inc., No. 93-5427, 1994 WL 388678 at *4-5 (E.D. Pa. 1994).[2] Thus, the plaintiff did have the opportunity to read and reject the terms of the passenger ticket without forfeiting her fare.

Next, the plaintiff asserts that enforcement of the forum selection clause will deprive her of her day in court because it deprives her of the ability to call crewmembers as live witnesses at trial. The plaintiff argues that trial in Florida will make it virtually impossible for her to call crewmembers as live witnesses because the crewmembers would only be subject to subpoena in Louisiana and not in Florida. She says that this makes enforcement of the forum selection clause fundamentally unfair.

The Court finds that there is no evidence that trial in the contractual "forum will be so gravely difficult and inconvenient that [she] will for all practical purposes be deprived of [her] day in court." 407 U.S. at 18, 92 S. Ct. at 1917. While the plaintiff's preference for calling the crewmembers as live witneeses at trial is understandable, her inability to call live witnesses (as opposed to deposition witnesses, for example) hardly deprives the plaintiff of her day in court.

Finally, the plaintiff maintains that this suit can be brought in this forum based on amendments to 46 U.S.C. §183c. The plaintiff asserts that this statute expressly prohibits enforcement of the forum selection clause in this case because the suit was brought in the port of embarkation.

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[2] In Hicks, the court found that a forum selection clause was valid and enforceable when the plaintiff had ample time to obtain and reject the terms of the passenger ticket without forfeiting her entire fare.

Again, the Court is not persuaded. The current version of Section 183c, which was enacted in December 1993, is identical to the version which was interpreted by the Supreme Court in Carnival Cruise Lines v. Shute, 499 U.S. 585, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991).[3] In Shute, the Supreme Court expressly declared that Carnival's forum selection clause did not violate Section 183c. Thus, Shute controls the disposition of this case. See Padel v. Carnival Corporation, No. 97-1936, 1997 WL 732424, at *2 (E.D. La. Nov. 24, 1997) (rejecting argument that Shute was legislatively overruled after Congress amended Section 183c to same version that was considered by Supreme Court in Shute); Launey v. Carnival Corp., No. 97-1470, 1997 WL 42605, at *1-2 (E.D. La. July 25, 1997) (same); Compagno v. Commodore Cruise Lines, Ltd., No. 94-1814, 1994 WL 462997, at *1-2 (E.D. La. Aug. 19, 1994)(same). Because the forum selection clause at issue is enforceable under federal law, this Court is an improper venue for the disposition of the case. Thus, the defendant's Motion to Dismiss is GRANTED.[4]

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3 Section 183c provides that:

> It shall be unlawful for the ... owner of any vessel transporting passengers between ports of United States or between any such port and a foreign port to insert in any ... contract ... any provision or limitation ... (2) purporting in [the event of death or injury] to lessen, weaken, or avoid the right of any claimant to a trial by a court of competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor. All such provisions or limitations contained in any such ... contract ... are declared to be against public policy and shall be null and void and of no effect.

4 Ordinarily, the Court would transfer this case under 28 U.S.C. §1404(a). However, because the plaintiff has already filed suit in the Southern District of Florida, dismissal rather than transfer is more appropriate.

II. Motion for Sanctions

The defendant also moves for sanctions against the plaintiff for failing to abide by the forum selection clause and filing suit in this district. Becauee the Court finds that the plaintiff has made a good faith argument against the enforcement of the forum selection clause, the Court will not impose sanctions.

Accordingly,

IT IS ORDERED: that defendant's motion to dismiss is GRANTED and defendant's motion for sanctions is DENIED.

New Orleans, Louisiana, August 26, 1999.

/s/ Martin L. C. Feldman
MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE

(2)

No. 00187

Supreme Court, U.S.
FILED
SEP 19 2000
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

Barbara Doran,
Petitioner,

v.

Carnival Corporation d/b/a/ Carnival Cruise Lines,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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PETITION FOR CERTIORARI FILED AUGUST 4, 2000

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QUESTIONS PRESENTED

1. Should this Court Grant Certiorari to Address Claims of Error by the Lower Courts Which Do Not Involve Conflicts Between the Decisions of this Court or Conflicts Between the Courts of Appeal?

2. Should this Court Grant Certiorari to Consider Creation of Unwieldy and Unnecessary Exceptions to its Widely Followed Decision in *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991), Based on Speculative Claims of Prejudice or Claims of Error Which Affect Only a Single Case?

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CORPORATE DISCLOSURE

Respondent Carnival Corporation has no parent company, nor does any public company own a ten percent or greater share of its stock.

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Procedural History

Plaintiff Barbara Doran filed suit in the United States Court for the Eastern District of Louisiana claiming personal injuries allegedly sustained while she was a passenger aboard M/V CELEBRATION, a cruise ship owned and operated by Carnival Corporation ("Carnival"), erroneously referred to in the complaint as Carnival Cruise Lines, Inc. Carnival filed a Motion to Dismiss and/or Transfer based on plaintiff's failure to file in the Florida forum designated in the Passenger Ticket Contract as the exclusive venue for such actions. By order dated August 27, 1999, the motion to dismiss was granted by the district court. (PApp. "B").[1/] Plaintiff appealed the decision to the United States Court of Appeals for the Fifth Circuit. In an unpublished opinion dated May 3, 2000 the Fifth Circuit affirmed the district court's decision. (PApp. "A").

Statement of Facts

Doran, a Canadian citizen and resident, boarded Carnival's cruise ship M/V CELEBRATION on April 17, 1998 in New Orleans, Louisiana for a one-week Caribbean cruise. During the week, the vessel called in the ports of Tampa, Grand Cayman, Playa del Carmen, and Cozumel, before returning to New Orleans. (RApp. "C," 9a). The theme of the cruise was romance novels. Plaintiff selected this particular cruise because she had been commissioned by the National Film Board of Canada to prepare a documentary on romance novels. Several days into the cruise, and during an outdoor reception, plaintiff was allegedly injured when a metal pole was blown off the deck above her. This

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1/ All "PApp." or "RApp." citations are to the appendices to Petitioner DORAN's Petition for Writ of Certiorari and Respondent's Appendix contained herein, respectively.

alleged injury at sea forms the basis of Doran's suit against Carnival. (PApp. "B," A-4 – A-5).

Doran's cruise was booked and paid for not by Doran, but by a Kent Martin. He purchased the ticket via American Express on March 26, 1998. Doran's cruise was described in Carnival's Brochure which is issued and available to all travel agents and to anyone who orders or inquires into a Carnival cruise. The brochure advises all potential passengers that the passage is "subject to the terms and conditions shown on the Carnival Cruise Lines' "terms and conditions of passage contract ticket" and that "copies [are] available on request." Further, it specifically states that "the procedure for resolution of disputes . . . must take place in the state of Florida." (RApp. "A," 5a). In the unlikely event Doran found that provision unacceptable, she could have canceled for a mere $200 charge. (RApp. "C," 24a).

Doran chose to wait nearly three weeks, and until the day she embarked on the cruise, to pick up her passenger ticket contract at the pier. (PApp. "B," A-6). Doran's voyage on M/V CELEBRATION was governed by the terms of that Passenger Ticket Contract which contained a forum selection clause designating Florida as the sole forum for the resolution of all disputes arising out of the voyage. (RApp. "C," 16a).

The Passenger Ticket Contact was issued in a multi-page booklet. The top, cover page of the booklet stated:

IMPORTANT NOTICE TO GUESTS

THE GUEST TICKET CONTRACT IN THIS BOOKLET CONTAINS CONDITIONS ON NUMBERED PAGES 1 THROUGH 11 IN THE REAR PORTION OF THIS BOOKLET. YOUR

ATTENTION IS DIRECTED TO THESE CONDITIONS, CERTAIN OF WHICH CONTAIN IMPORTANT LIMITATIONS ON RIGHTS OF PASSENGERS TO ASSERT CLAIMS AGAINST THE CRUISE LINE, VESSEL OR THEIR AGENTS OR EMPLOYEES. PLEASE READ THE CONTRACT AND THESE TERMS AND RETAIN THE CONTRACT FOR FUTURE REFERENCE.

Page 1 of the cruise ticket contract stated:

IMPORTANT NOTICE TO GUESTS

THIS DOCUMENT IS A LEGALLY BINDING CONTRACT ISSUED BY CARRIER TO, AND ACCEPTED BY, GUEST SUBJECT TO THE IMPORTANT TERMS AND CONDITIONS APPEARING ON THE FOLLOWING SIX PAGES. THE PROVISIONS ON THE FOLLOWING PAGES OF THIS CONTRACT ARE INCORPORATED AS FULLY REWRITTEN ON THE FACE OF THIS CONTRACT.

NOTICE: THE ATTENTION OF GUEST IS ESPECIALLY DIRECTED TO CLAUSES 1, 3, 5, 6, 7, 8, 9, 11, 12, 14, 16, 21, 22 AND 24, WHICH CONTAIN IMPORTANT LIMITATIONS ON THE RIGHTS OF GUEST TO ASSERT CLAIMS AGAINST CARRIER, THE VESSEL OR ANY OF THEIR AGENTS OR EMPLOYEES.

The Terms & Conditions Portion of the Contract read:

> 3.(a) The acceptance of this ticket by the person or persons named hereon as passengers shall be deemed to be an acceptance and agreement by each of them of all of the terms and conditions of this Passage Contract Ticket.
>
> 8. It is agreed by and between the guest and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this Contract shall be litigated, if at all, in and before a Court located in the State of Florida, U.S.A. to the exclusion of the Courts of any other state or country.

The same ticket packet also contained a "Welcome Aboard" brochure which provides another notice to passengers that there are important terms and conditions within the Passenger Ticket Contract which effect their legal rights. (RApp. "D," 26a; "A," 2a). Doran admits she received her Passenger Ticket Contract before she embarked on her cruise. (PApp. "A," A-2; "B," A-6).

Doran submitted no affidavit or declaration in opposition to Carnival's Motion to Dismiss and/or Transfer in the district court. As the record stands, Doran has not demonstrated: (1) that she was not provided with adequate notice of the forum-selection clause contained within her Passenger Ticket Contract; (2) that upon learning of the forum-selection clause when she picked up her ticket contract at the pier, she attempted to cancel her voyage but changed her mind upon learning she would be forced to forfeit her fare; or (3) that there are any members of the M/V CELEBRATION crew upon whose live trial testimony she is

dependant and that she has reason to believe they will remain subject to subpoena in New Orleans at the time her personal injury action would proceed to trial.

Reasons Why the Petition Should Be Denied

Doran essentially concedes that the courts below correctly understood and applied the settled law. She asks that these long-settled principles be reinterpreted simply to change the outcome of her particular case.

The Petition raises no questions appropriate for resolution by a writ of certiorari. To the contrary, alteration of the legal principles established by this Court and the courts of appeal will cause uncertainty in an area of the law known for clarity and stability.

The courts of appeal and the district courts have had no apparent difficulty interpreting *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991), and a large body of case law consistent with that Opinion has been developed. No convincing basis to disturb that jurisprudential stability has been advanced, notwithstanding the factual speculation which dominates the Petition.

Argument

1. The Petition Incorrectly Supposes a Conflict Between *The MAJESTIC and Carnival Cruise Lines v. Shute*, and Thus Presents No Question Appropriate for Review by this Court.

Doran argues that the lower courts' decisions have created a conflict between two decisions of this Court, *The MAJESTIC*, 166 U.S. 375 (1897), and *Carnival Cruise Lines v. Shute*, 499

U.S. 585 (1991). Doran is wrong. The lower courts simply held, consistently with *Shute*, that the forum selection provision of a passenger ticket contract is binding upon the passenger where, as here, its terms were reasonably communicated. *The MAJESTIC* holds only that exculpatory clauses in a maritime contract not reasonably communicated will not be given effect. Where, as here, the ticket contact is reasonably communicative, the forum selection agreement will be enforced. The cases are not in conflict at all, and the appellate court here applied them correctly.

The "conflict" Doran labors to create here is dependent on deeming the telephone booking of her cruise (done here by someone other than Doran) as the time of formation of the maritime contract at issue. Because the forum selection agreement was not communicated during that conversation, Doran incorrectly argues, it is not enforceable unless supported by separate consideration. (Petition, p7). This argument is meritless.

What Doran is really asserting is that the body of law holding that the written passenger ticket contract is the operative agreement so long is it is reasonably communicated, including *Shute*, should be uprooted. If Doran's argument were accepted, all of the many decisions of the district courts and courts of appeal giving effect to the terms of reasonably communicated passenger ticket contracts would be in doubt.

An examination of the well-developed law applicable to passenger ticket contracts shows the fundamental error in Doran's position. As a general rule, so long as a cruise line has done all that it reasonably can do to impress upon passengers the importance of the terms and conditions of the passage contract, the conditions are enforceable. *Spataro v. Kloster Cruise, Ltd.*, 894 F.2d 44 (2d Cir. 1990). The courts have consistently held that the provisions in a ticket contract are binding regardless of

whether the passenger has actual knowledge of those provisions. *DeNicola v. Cunard Line, Ltd.*, 642 F.2d 5, 11 (1st Cir. 1981). If, as here, a passenger fails to avail herself of the opportunity to read the ticket, its provisions are not invalidated. *Strauss v. Norwegian Caribbean Lines, Inc.*, 613 F. Supp. 5, 8 (E.D. Pa. 1984); *Carpenter v. Klosters Rederi A/S.*, 604 F.2d 11, 13 (5th Cir. 1979); *Miller v. Lykes Bros. S.S. Co.*, 467 F.2d 464, 465 (5th Cir. 1972). The relevant inquiry is whether the passenger *had the opportunity* to read the ticket. *Barkin v. Norwegian Cruise Lines*, 1988 AMC 645 (D. Mass. 1987), *Kendall v. American Hawaii Cruises*, 704 F. Supp. 1010, 1017 (D. Haw. 1989).

Both the lower courts in this case found that Doran had the opportunity to read and reject the terms of the passenger ticket. They further found she had failed to present any evidence that she was prevented from obtaining her ticket or information regarding its terms at an earlier date. (PApp. "B," A-6 – A-7; Doran submitted no declaration in opposition.

The only remaining question under existing law is whether the passenger ticket contract at issue here is "reasonably communicative." In fact, this is the very passenger ticket contract approved by *Shute*, and which has been uniformly found to meet the standard of reasonable communicativeness. *See, e.g., Tone v. Carnival Cruise Lines, Inc.*, 1993 WL 437650 (E.D. Pa. Oct. 28, 1993) (finding warning language and physical characteristics of Carnival's forum selection clause to be reasonably communicated to passenger); *see also Partesi v. Carnival Cruise Lines, Inc.*, 1991 AMC 1401 (D. N.J. 1990).

The federal courts have long applied the standard of "reasonable communicativeness" to determine whether the terms, regulations and conditions set out in cruise ticket contracts are binding upon passengers. Where, as here, the standard is met, the

forum selection provision will be given effect. *See, e.g., Dempsey v. Norwegian Cruise Line*, 972 F. 2d 998 (9th Cir. 1992); *Spataro v. Kloster Cruise, Ltd.*, 894 F.2d 44 (2nd Cir. 1990); *Hodes v. S.N.C ACHILLE LAURO*, 858 F.2d 905 (3rd Cir. 1988). Whether contract terms have been "reasonably communicated" to a passenger is a question of law to be determined by the court. *Dempsey*, 972 F.2d at 999, citing *Deiro v. American Airlines, Inc.*, 816 F.2d 1360, 1364 (9th Cir. 1987). Some physical characteristics that the courts have examined to determine "reasonableness" are the size of type used, conspicuousness and clarity of notice on the face of the ticket and the ease with which a passenger can read the provisions in question. *Deiro*, 816 F.2d at 1364. The warnings/notices on the Passenger Ticket Contract Doran was issued fit all these parameters. They are clear, easy to read, and specifically called Doran's attention to the section of the contract where the forum selection clause is contained. Every court to examine Carnival's ticket contract has found it to be valid and enforceable. *Shute*, 499 U.S. at 585; *Tone v. Carnival Cruise Lines, Inc.*, 1993 WL 437650 at 2 (E.C. Pa. Oct. 28, 1993); *Bailey v. Carnival Cruise Lines, Inc.*, 774 F.2d 1577 (11th Cir. 1985); *Hallman v. Carnival Cruise Lines, Inc.*, 459 So.2d 378 (Fla. 3d Dist. Ct. App. 1984); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18 (D. Md. 1984), *aff'd*, 806 F.2d 257 (4th Cir. 1986); *Ciliberto v. Carnival Cruise Lines, Inc.*, 1986 AMC 2317 (E.D. Pa. 1986); and *Ignerti v. Carnival Corp.*, 1996 WL 68537 (E.D.N.Y. 1996).

Doran has suggested a cruise line should be required to communicate all enforceable terms of its ticket contract to its passengers at the time of booking. (Petition, p4, 6-7). This is not the state of the law nor would it be a rational change in the law. The federal courts have established that the proper test for enforcing a forum selection clause is whether the terms of the ticket are reasonable communicated to the passenger before she

boards the vessel, *not* before she entered into the contract. *See Tone*, citing *Hodes v. S.N.C. ACHILLE LAURO*, 858 F.2d 905 (3rd Cir. 1988). In *Tone*, the plaintiffs, like Doran, argued they did not have sufficient notice of the forum selection clause before entering into the contract. *Tone* specifically rejected that argument and instead reiterated the established principles of long-standing federal maritime cases upholding passage contracts if they meet a practical standard of "reasonable communicativeness." *Tone* at 2. The *Tone* court also stated that Carnival's "Welcome Aboard" brochure, sent with the passage ticket contract and other travel documents, could be considered part of the totality of warnings and notices alerting plaintiffs to read their ticket contract. *Id.* at 4. *See also*, *Gomez v. Royal Caribbean Cruise Lines*, 964 F. Supp. 47, 51 (D.P.R. 1997). In the instant case, as in *Tone* and *Gomez*, Doran's Welcome Aboard brochure provided her with yet another notice of the important and binding terms of her ticket contract. (RApp. "D," 26a).

This is a far cry indeed from a conflict with *The MAJESTIC*, which involves an unexpected exculpatory clause buried on the back side of a contract. Passengers traveling from Liverpool to New York by steamship discovered their trunks were badly damaged by seawater upon disembarking. They sued for loss, and the court was called upon to determine the effect of inconspicious provisions contained on the back of their contract of carriage purporting to limit the carrier's liability altogether. The court, applying English law, found that the notices were insufficient to be interpreted as part of the contract. The court added,

> [The] rule is not otherwise in this country . . . a notice . . . even though printed on the bill of lading or other contract of the carrier, unless referred to in the body of the contract and made a part of it, is no

more than a notice and does not form a part of the contract between a shipper and a carrier.

The MAJESTIC interpreted a limitation of liability clause, not a forum selection clause, and a form of contract and contract language entirely different than the plainly worded and integrated notice of the forum selection clause that forms part of Carnival's ticket contract with its passengers. Furthermore, *The MAJESTIC* does not hold, as Doran suggests, that the exculpatory clause could not be enforced because it was not communicated at the time of the booking.

There is no conflict in the cases of this Court, and the Petition should be denied.

2. Creating a "Home Port" Exception to *Shute* Would Undermine the Court's Established Requirement that a "Heavy Burden" Must be Borne by a Passenger Seeking to Escape the Effect of a Forum Selection Clause, and Would Create Confusion of Application Where There Previously Has Been Clarity.

Doran also appeals to the Court to take this opportunity to "revisit and refine" its holding in *Shute*. (Petition, p8). She asks in the interest of "fairness" that an exception be created to enforcement of forum selection clauses to allow a passenger to sue in the home port/port of embarkation. Doran's argument, made without citation to any case authority, is based on her unsupported speculation that she will have access to trial evidence in New Orleans which would be unavailable to her in the designated forum of Florida. She theorizes that since Carnival could be subject to other potential suits in New Orleans, by virtue of M/V CELEBRATION's embarkation from that port, Carnival

would suffer no prejudice from being subject to passenger claims in that venue as well. (Petition, p10-11). Doran's logic is flawed.

Doran's Spring 1998 Caribbean cruise embarked and disembarked in New Orleans, Louisiana, but also stopped in Tampa, Florida, the very state designated in Carnival's forum selection clause. (RApp. "C," 9a). In addition, as Doran correctly points out, the cruise industry is in a growth cycle. As a result of competition among cruise lines, the addition of new vessels to the cruise fleet, and as a consequence of the general nature of the industry, vessel itineraries and ports of call are constantly changing. As is easily verified by Carnival's website,[2/] M/V CELEBRATION, will begin cruising primarily out of Galveston, Texas beginning in October of this year, significantly reducing the time it spends in New Orleans. Contrary to Doran's argument in favor of her proposed weakening of *Shute,* there is no guarantee that a vessel will continue to be found in the identical port of embarkation at the time a passenger's claim is set for trial.

Further, and regardless of whether M/V CELEBRATION continues to call on the port of New Orleans, it is pure speculation to suppose that the crewmembers who allegedly witnessed Doran's injury will remain aboard the vessel and subject to subpoena at the time of trial. If Doran's proposed weakening of *Shute's* holding is adopted, it could easily result in a case proceeding to trial in a forum which bears little relationship to the parties or events that gave rise to the claim. Assume for the sake of argument that M/V CELEBRATION discontinued cruising from New Orleans and that Doran's suit was allowed to progress there. A trial would then involve: a Canadian citizen, an incident that occurred in international waters, and a Panamanian corporation with its U.S. headquarters and the majority of its

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2/ *See,* http://carnival.com/tour/ship/ships.asp?SC=CE

vessels located in Florida.

Even giving credence to Doran's speculative suggestion that M/V CELEBRATION will continue to call on New Orleans, and that the crewmembers on whose testimony she intends to rely at the time of her trial will remain aboard and subject to subpoena, Doran's argument the case is "inherently more suited for resolution" in that forum (Petition, p10) is not compelling and certainly not the sort of issue suited for review by certiorari. Doran is a Canadian, being treated by Canadian doctors, for an incident that occurred in international waters, and who has sued a Panamanian corporation with its U.S. offices located in Florida. New Orleans hardly emerges as the obvious forum choice. In addition, Rule 45 of the Federal Rules of Civil Procedure gives Doran broad subpoena power to obtain testimony and to compel the production of documents far outside the boundaries of a district court in Florida. The necessity for obtaining witness testimony outside a district in which an action is pending is hardly a unique feature of Doran's case, or of cruise cases generally. Indeed, it is a common feature of almost all federal litigation, particularly diversity and maritime cases. Modern technology has brought with it a wealth of opportunities for preserving testimony for trial in the event live testimony is not possible. The use of deposition testimony at trial is a routine occurrence in nearly all civil litigation, and the federal rules contain extensive provisions providing for methods and manners of doing so. A litigant's speculation that these methods might be necessary, or her preference for live testimony, are not appropriate concerns to address by certiorari, nor is the issue whether the lower courts here gave these issues their deserved weight. *See, i.e. Ross v. Moffitt*, 417 U.S. 600, 616-17 (1974).

Doran argues that Carnival is subject to other litigation in New Orleans by virtue of its present use of the city's port and

therefore will not be prejudiced if passengers are now allowed to file suit there as well. (Petition, p11). This misses the point. Although it is true that Carnival is at least potentially subject to other litigation in New Orleans related to business done in that city, it has carefully contracted with its passengers to limit its exposure to suits to courts in the state of Florida. This practice benefits not only Carnival, but the judiciary and passengers as well, as was noted with approval in *Shute*:

> A cruise line has a special interest in limiting the fora in which in which it potentially could be subject to suit. Because a cruise line typically carries passengers from many locales, it is not unlikely that a mishap on a cruise could subject the cruise line to litigation in several different fora. . . . Additionally, a clause establishing *ex ante* the forum for dispute resolution has the salutary effect of dispelling any confusion about where suits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions the correct forum and conserving judicial resources that otherwise would be devoted to deciding those motions . . . . Finally, it stands to reason that passengers who purchase tickets containing a forum clause like that at issue in this case benefit in the form of reduced fares reflecting the savings the cruise line enjoys by limiting the fora in which it may be sued.

Shute, 499 U.S. at 593-594, (internal citations omitted).

The court went on to add that although forum selection clauses are subject to judicial scrutiny for fundamental fairness, Carnival's designation of Florida as the forum in which disputes are to be

resolved was in good faith, inasmuch as Carnival's principal place of business is located there and many of its cruises depart from and return to Florida ports. *Shute,* 499 U.S. at 595.

If, as Doran urges, the court acts in this case to allow cruise passengers the option to file suit in *either* the forum designated in the ticket contract or the "home port/port of embarkation" of the vessel on which they traveled, it will eviscerate one of the forum selection clause's chief benefits, namely its "salutary effect of dispelling any confusion about where suits . . . must be brought and defended." *Shute*, 499 U.S. at 593-594. In addition, although it appears that Doran is using the terms "home port" and "port of embarkation" interchangeably, even that is not clear. Doran's petition does not define these terms. The law as it stands today is certain. A passenger suit against Carnival must be brought in Florida. If Doran's theory is adopted, Carnival could suddenly become subject to suit in several separate fora for the same incident. It is foreseeable that a cruise ship on which a passenger-claimant traveled could change itineraries, even multiple times, in the length of time following an alleged incident, the filing of suit, and the scheduling and arrival of a trial date. Doran's proposed exception would not only erode *Shute*, but would lead to confusion and to expensive and extensive pretrial litigation concerning the selection of a proper forum.

3. Doran's Failure to Read the Terms of the Ticket Contract or Cancel Before the Date of Her Embarkation Were the Result of Her Own Lack of Diligence, and Do Not Provide a Tenable Basis to Discard Established and Clear Precedent.

Doran has also argued that enforcement of the forum selection clause in her ticket contract is unfair and the result of "overreaching" because she did not have actual notice of the "restrictive conditions" until after her ticket had been purchased and she was subject to a cancellation penalty. (Petition, p4, 10). Doran's argument, as aptly pointed out by the district court, ignores the fact that she chose to wait to obtain her ticket contract until the date of her departure. The lower courts correctly found she did have the opportunity to read and reject the terms of the passenger ticket without forfeiting her fare, but chose not to do so. (PApp. "B," A-2 -- A-3, A-6 -- A-7). If Doran had read the ticket's terms and conditions at any time after her ticket was purchased on March 26, 1998 and up to four days prior to the start of her cruise vacation, her reservation cancellation fee would have only been $ 200.00.[3/] (RApp. "C," 24a). Doran makes no claim that she was prevented from obtaining her ticket contract at an earlier date, nor that she attempted to cancel her cruise when she learned of the forum selection provision in the contract. The existing law does not permit a passenger to avoid the effect of the provisions of the ticket contract by that passenger's own inaction.

Hicks v. Carnival Cruise Lines, Inc., 1995 AMC 281 (1994) is directly on point. Hicks, allegedly injured in a slip and fall while cruising, attempted to escape a forum selection

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[3/] In fact, Doran herself would have suffered no cancellation penalty at all because Kent Martin was the purchaser of the ticket, not Doran.

provision by arguing, *inter alia*, that because she received the ticket the night before the cruise she could not have rejected it without forfeiture of her fare. The court was not persuaded by her argument, noting Hicks had paid for her ticket months before and was not prevented from obtaining her tickets or information concerning its terms at an earlier date. It explained its holding, enforcing the forum selection clause, in this manner:

> To accept Hicks' argument would insulate all passengers from the effect of forum selection clauses, concomitantly placing the burden of their non-enforcement on the cruise lines, simply because the agents responsible for the cruise arrangements, or the passengers themselves, were not diligent.

Hicks, 1995 AMC at 289.

The overwhelming majority of other cases in which a passenger has made a contention that a forum selection clause should be invalidated due to forfeiture of all or part of a cruise fare upon cancellation are consistent with *Hicks*. *See, e.g., Miller v. Regency Maritime Corp.*, 824 F. Supp. 200, 1993 AMC 1103 (N.D. Fla. 1992) (a cancellation policy under which the portion of the fare forfeited increased as the time between cancellation and departure decreased, and which would have required a 40% forfeiture at the time plaintiff received her ticket 20 days before cruising, did not alone invalidate an otherwise valid forum selection clause); *Bounds v. Sun Lines Cruises, Inc.*, 1997 AMC 25 (C.D. Cal. 1996) (Passengers canceled their tickets before boarding would have forfeited 25% of the ticket price or $625 each; this did not deprive them of the right to reject the forum-selection clause with impunity) ; *Cross v. Kloster Cruise Lines, Ltd.*, 897 F. Supp. 1304 (1995) (upholding the forum selection

clause despite a full forfeiture clause in the ticket considering, in part, evidence that the cruise line's policy was to permit cancellations up to four days before sailing at a cost of $400 versus the full $3,555 fare); and *Viney v. Kloster Cruises, Ltd.*, 1997 AMC 544 (N.D. Cal. 1996) (defendant presented evidence its policy was to provide a full refund in the event a passenger wished to cancel a cruise based on a provision of a ticket contract). Doran has not made any showing of why these well-established precedents should be disturbed.

4. Doran Did Not Meet Either the "Heavy Burden" or the "Exceptional Circumstances" Showings Required to Avoid the Forum Selection Clause, and Weakening *Shute* to Permit a Lower Standard Would Eviscerate the Certainty of Application Which *Shute* Intended to Provide.

Doran urges the court to "reconcile" *Shute* and *Bremen v. Zapata Offshore Co.*, 407 U.S. 1 (1972), both admiralty decisions of the Court in which forum selection clauses were enforced, with "its procedural treatment of forum selection clauses in diversity cases." (Petition, p11). This is in essence a request to discard the standards adopted by this Court in *Shute* and consistently applied throughout the circuit courts of appeal: a valid forum-selection clause is given controlling weight in all but the most exceptional cases. *Shute*, 499 U.S. at 595. Instead, Doran would substitute the far more lenient "interests of justice" standard used by 28 U.S.C. § 1404(a) in matters not involving forum selection provisions.

In an attempt to argue a conflict where none exists, Doran cites to *Stewart Organization, Inc. v. Ricoh Corporation*, 487 U.S. 22 (1988) as support for her mistaken claim that the less stringent

§ 1404(a) test applies. Doran is wrong. *Stewart* held, within the context of a motion to transfer pursuant to 28 U.S.C. 1404(a), that federal law (vs. state law) was applicable to the trial court's determination. It also found that because the statute makes transfers discretionary with the trial court: "it is *conceivable* in a particular case . . . that . . . a district court acting under § 1404(a) would refuse to transfer a case notwithstanding the counterweight of a forum-selection clause." *Stewart*, at 30-31. Although Doran urges that under a "*Stewart*" analysis the inability to subpoena live trial witnesses would be grounds for refusing to enforce the forum selection clause, the *Stewart* opinion merely remanded the case to the district court so that it might determine the appropriate effect under federal law of the parties' forum-selection clause. *Stewart* nowhere mentions, much less considers the appropriate weight to be afforded the availability of compulsory process for compelling live trial testimony.

Perhaps more to the point, *Shute* fully harmonized *Stewart* and *Bremen* by explicitly adopting Justice Kennedy's concurring opinion in *Stewart*. *Shute*, 499 U.S. at 594. That concurrence, after lauding the benefits of forum selection clauses, states in relevant part:

> "The federal judicial system has a strong interest in the correct resolution of these questions, not only to spare litigants unnecessary costs but also to relieve courts of time consuming pretrial motions. Courts should announce and encourage rules that support private parties who negotiate such clauses. Though state policies should be weighed in the balance, the authority and prerogative of the federal courts to determine the issue, as Congress has directed by § 1404(a), **should be exercised so that a valid forum-**

> **selection clause is given controlling weight in all but the most exceptional cases"**

Stewart, 487 U.S. at 21 (emphasis added).

This view is consistent with the standard elucidated in *Bremen*, and adopted by *Shute*, and in a passenger claim context identical to the one at issue here, that a passenger must meet a "heavy burden" to set aside a forum selection clause. *Shute*, 499 U.S. at 595. Courts have uniformly upheld forum selection clauses in circumstances in which substantial inconvenience has been claimed (and, unlike here, supported by evidence submitted by the passenger). For example, in *Effron v. Sun Line Cruises, Inc.*, 67 F.3d 7 (2nd Cir. 1995), the 74-year old plaintiff argued that enforcing a forum selection clause contained in her passenger ticket which required all actions to be brought in Athens, Greece, would be fundamentally unfair because it would deprive her of her day in court. *Id.* at 9. Plaintiff filed an affidavit stating that all of her witnesses lived in the United States and she would be deprived of their testimony at trial. She also argued that she was partially disabled and would have to hire someone to assist her physically, could not afford to travel to Greece, and was afraid to stay in a strange city where she did not know the language or customs, knew no Greek lawyers, was ignorant of the Greek legal system, and could not afford to hire a Greek interpreter. Although the district court sided with Effron, the Second Circuit reversed and enforced the forum selection clause, pointing out:

> There is no evidence that appellants obtained appellee's accession to the forum selection clause by fraud or overreaching . . . . Moreover, there is no indication that appellants designated Greece as the forum to discourage cruise passengers from pursuing legitimate claims . . . Appellee has made

> no showing whatsoever that she would not receive a fair hearing on her claims in Greece.

In regard to Effron's claims she would be deprived of witness testimony in Greece, the Court stated:

> Finally, appellee's complaints about the difficulty of transporting witnesses abroad must be weighed against the difficulties that Sun Line Greece would encounter if it were to respond to suits in a multitude of jurisdictions. . . We note also that there may not be any need for appellee to transport witnesses to Greece in order to benefit from their testimony . . . . 'Greek courts may request American courts . . . to take testimony under a 'commission rogatoire.' Depositions abroad may be taken before Greek consular officers.'

Effron 67 F. 3d at 11.

Whether the Court looks at the "heavy burden" standard of *Shute* 499 U.S. at 595, or the "exceptional circumstances" standard in Justice Kennedy's concurrence in *Stewart*, 487 U.S. at 21, the result is the same. The forum selection clause contained within Carnival's Passenger Ticket Contract is valid and enforceable under existing law. This is precisely the predictability of result which this Court intended by *Shute*, and its correct application by the lower courts here presents no reason or occasion to revisit their application.[4/]

[4/] The lower courts have relied extensively upon *Shute* and have built up a large body of decisions following its holding. As of August 31, 2000 *Shute* had been cited a total of 797 times according to Shepards. Among the case citations (as compared with secondary authorities), *Shute* has been "followed"

5. Congress Has Reaffirmed *Shute* by Amending 46 U.S.C. § 183c to Strengthen the Enforceability of Cruise Ship Forum Selection Clauses, Providing Yet Another Reason Not to Disturb *Shute's* Reach or Application.

Shute has been given implicit approval by Congress by way of its December 1993 revision of a short-lived and post-*Shute* amendment to 46 U.S.C. § 183c. Section 183c governs limitation of liability clauses in maritime contracts, and is applicable to vessels transporting passengers between a port in the United States and any other port, whether U.S. or foreign. The Court in *Shute* examined the version of the statute applicable prior to November, 1992, and found that enforcement of Carnival's forum selection clause did nothing to take away passengers' statutory right to "a trial by [a] court of competent jurisdiction." *Shute*, 499 U.S. at 596. The court specifically held that Carnival's clause did not violate § 183c. *Id.* at 597. Following *Shute*, the statute was briefly amended to an interim version which changed the language "by a court of competent jurisdiction" to read, instead, "by *any* court of competent jurisdiction." *See* Pub. L. #102-587, § 3006. That language was added to arguably invalidate forum selection clauses limiting passenger suits to a particular forum. However, Congress again amended the statute in late 1993 to return the statute to its original meaning, and to the same language considered by *Shute*. During the Senate debate on the subject of the effect of this return of § 183c to the language interpreted by *Shute*, Senator Stevens stated:

> The House section-by-section analysis of the Coast

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61 times and "distinguished" or " criticized" only 13 times. Its authority has been followed or applied by Courts in almost every judicial district of the United States.

> Guard Authorization Act states that 'Section 309 of H.R. 2150 should not be construed to mean that a vessel owner may enforce a Forum Selection Clause in a passenger ticket.' This statement contradicts what we intended. Our intent was that Section 309 should be interpreted to allow vessels to enforce such clauses, as upheld by the Supreme Court in the *Shute* case.

140 Cong. Rec. s1847-02 (Daily Ed. February 24, 1994).

Senator Breaux explained:

> While it is perfectly legitimate for the Congress to overturn a Supreme Court decision within the bounds of the Constitution, we do not believe such changes should be made without notification to, and careful consideration by the Members of Congress responsible for the legislation . . . . It is for this reason that the Senate supported a provision to the Coast Guard Authorization Act of 1993 to restore Section 4283B to the wording as it read prior to the passage of the Oceans Act of 1992. Section 309 reinstates the Supreme Court decision in the *Shute* case as the applicable law for interpreting forum selection clauses.

Id.

This Act of Congress is a clear indication of its approval of *Shute* and the current state of the law regarding the enforceability of forum selection clauses within passenger ticket contracts.

Conclusion

The court should decline Petitioner's invitation to create chaos and uncertainty in an area of the law known for its stability and consistent application. Carnival respectfully submits that the Petition be denied.

Dated: September 18, 2000

Respectfully submitted,

KAYE, ROSE & PARTNERS, LLP
Lawrence W. Kaye
402 West Broadway, 21st Floor
San Diego, CA 92101

Attorneys for Respondent
CARNIVAL CORPORATION.

APPENDIX A – AFFIDAVIT OF MARTHA ASKOUNIS DATED JULY 21, 1999

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Case No. 99-0800

BARBARA DORAN,

Plaintiff,

v.

CARNIVAL CRUISE LINES, INC.,

Defendant.

AFFIDAVIT OF MARTHA ASKOUNIS

Martha Askounis, certifies under penalty of perjury that the following statements are true and correct:

1. I am a Claims Representative for defendant Carnival Corporation, erroneously referred to by Plaintiff as Carnival Cruise Lines, Inc. (hereinafter "Carnival"). This affidavit is based on my personal knowledge and records kept by Carnival in the ordinary course of its business.

2. The Plaintiff purchased her ticket from Carnival Corporation and picked up the ticket at the pier prior to sailing.

3. The ticket contract is contained in a packet which

contains other items, such as luggage tags and a brochure entitled "Welcome Aboard!." A copy of the brochure is attached hereto as Exhibit "A". In the Table of Contents on the back of the first page of the brochure, the first item is entitled "Things to Know Before Sailing" and one of the things mentioned is the "Conditions of Contract." The following statement is printed on page 8 of the "Welcome Aboard" brochure under the heading "Conditions of Contract":

> If you look at the cover of your ticket booklet, you'll see an "Important Notice to Guests." This notice directs your attention to the terms and conditions of your contract. It is important to read this and become acquainted with the specific conditions and limitations of your passage.

4. Attached hereto as Exhibit "B" is a specimen passenger ticket contract which is a true and complete copy of the passenger ticket contract issued to Carnival's passengers in 1998, including the plaintiff.

5. The plaintiff's passenger ticket contract was issued in a multi-page blue booklet. The top, cover page, of this booklet has the following hearing in bold bright blue capital letters: "IMPORTANT NOTICE TO GUESTS". Under that heading appears the following text:

> THE GUEST TICKET CONTRACT IN THIS BOOKLET CONTAINS CONDITIONS ON NUMBERED PAGES 1 THROUGH 7 IN THE REAR PORTION OF THIS BOOKLET. YOUR

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ATTENTION IS DIRECTED TO THESE CONDITIONS, CERTAIN OR WHICH CONTAIN IMPORTANT LIMITATIONS ON THE RIGHTS OF GUESTS TO ASSERT CLAIMS AGAINST THE CRUISE LINE, VESSEL OR THEIR AGENTS OR EMPLOYEES. PLEASE READ THE CONTRACT AND THESE TERMS AND RETAIN THE CONTRACT FOR FUTURE REFERENCE.

6. On the face of page 1 of the passenger ticket contract, appears the following legend in bold capital letters:

IMPORTANT NOTICE TO GUESTS

THIS DOCUMENT IS A LEGALLY BINDING CONTRACT ISSUED BY THE CARRIER TO, AND ACCEPTED BY THE GUEST SUBJECT TO THE IMPORTANT TERMS AND CONDITIONS APPEARING ON THE FOLLOWING SIX PAGES. THE PROVISIONS ON THE FOLLOWING PAGES OF THIS CONTRACT ARE INCORPORATED AS THOUGH FULLY REWRITTEN ON THE FACE OF THIS CONTRACT. NOTICE: THE ATTENTION OF THE GUEST IS ESPECIALLY DIRECTED TO CLAUSES 1, 3, 5, 6, 7, 8, 9, 11, 12, 14, 16, 21, 22 AND 24, WHICH CONTAIN IMPORTANT LIMITATIONS ON THE RIGHTS OF GUEST TO ASSERT CLAIMS AGAINST

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CARRIER, THE VESSEL OR ANY OF THEIR AGENTS OR EMPLOYEES.

7. The terms and conditions of the passenger ticket contract are contained in pages 2 through 7. These pages of the passenger ticket contract were retained by the plaintiff upon boarding the vessel.

8. The pertinent portions of the passenger ticket contract's terms and conditions provide in clear and unambiguous language as follows:

> 3(a) The acceptance of this ticket by the persons named hereon as passengers shall be deemed to be an acceptance and agreement by each of them of all of the terms and conditions of this Passage Contract Ticket.
>
> 8. It is agreed by and between the passenger and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this contract shall be litigated, if at all, in and before a court located in the State of Florida, U.S.A., to the exclusion of the Courts of any other state or country.

9. A similar "Things to Know Before You Go" is contained in Carnival's travel brochure available to any prospective guest on a Carnival Cruise. Said section of the 1998-

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1999 brochure states, in bold face letters, the following:

> Cruise passage is subject to the terms and conditions shown on the Carnival Cruise Lines' "Terms and Conditions of Passage Contract Ticket" (copies available upon request), including the procedure for the resolution of disputes which must take place in the State of Florida.

10. Plaintiff's therefore had notice that there were rights and limitations contained in the Passenger Ticket Contract, including the forum selection clause. Said notice was contained in the language on the front cover of the passenger ticket contract, in the Welcome Aboard brochure that accompanied said contract and in the travel brochure available to any person planning to travel with Carnival.

FURTHER AFFIANT SAYETH NOT.

s/Martha Askounis
Martha Askounis

Claims Representative

Sworn and subscribed before me at Miami, Dade County, Florida this 21st, day of July, 1999

s/ Shannon Motsinger
Notary Public, State of Florida at large

APPENDIX B – SUPPLEMENTAL AFFIDAVIT OF MARTHA ASKOUNIS DATED AUGUST 24, 1999

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Case No. 99-0800

BARBARA DORAN,

Plaintiff,

v.

CARNIVAL CRUISE LINES, INC.,

Defendant.

SUPPLEMENTAL AFFIDAVIT
OF MARTHA ASKOUNIS

Martha Askounis, certifies under penalty of perjury that the following statements are true and correct:

1. The guest passenger ticket issued in the name of Barbara Doran was booked and paid for on March 26, 1998.

2. The ticket was paid for by a Kent Martin with his American Express card.

3. The Carnival brochure, which is issued and available to all travel agents and to anyone who orders or inquires into a ticket, a true copy of which is attached hereto, specifically advises

potential cruisers that the passage is "subject to the terms and conditions shown on the Carnival Cruise Lines' 'terms and conditions of passage contract ticket" and that "copies available upon request." It also specifically states that "the procedure for resolution of disputes [. . .] must take place in the State of Florida."

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Executed on this 24th day of August, 1999 at Miami, Florida.

s/Martha Askounis
MARTHA ASKOUNIS

SWORN AND SUBSCRIBED BEFORE ME
THIS THE 24TH DAY OF AUGUST, 1999.

s/ Shannon C. Motsinger
NOTARY PUBLIC

APPENDIX C – EXCERPTS FROM PASSENGER TICKET CONTRACT[1]

WELCOME ABOARD the "Fun Ships"

IMPORTANT NOTICE TO GUESTS

THE GUEST TICKET CONTRACT IN THIS BOOKLET CONTAINS CONDITIONS ON NUMBERED PAGES 1 THROUGH 11 IN THE REAR PORTION OF THIS BOOKLET. YOUR ATTENTION IS DIRECTED TO THESE CONDITIONS, CERTAIN OF WHICH CONTAIN IMPORTANT LIMITATIONS ON RIGHTS OF GUESTS TO ASSERT CLAIMS AGAINST THE CRUISE LINE, VESSEL OR THEIR AGENTS OR EMPLOYEES. PLEASE READ THE CONTRACT AND THESE TERMS AND RETAIN THE CONTRACT FOR FUTURE REFERENCE.

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[1] Authenticated by Affidavit of Askounis, ¶ 4.

Appendix C

Western Caribbean Itinerary

DAY	PORT	ARRIVE	DEPART
Fri	New Orleans		6:00 PM
Sat	At Sea		
Sun	Tampa	8:00 AM	6:00 PM
Mon	At Sea		
Tues	Grand Cayman	7:00 AM	1:00 PM
Wed	Playa del Carmen*	8:30 AM	9:00 AM
Wed	Cozumel	10:30 AM	6:00 PM
Thur	At Sea		
Fri	New Orleans	9:00 AM	
*Operational stop for Tulum debarkation only.			

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Cruise Ticket - Guest Copy

Booking Number:	D7K031
Group Name:	MEDIA BLOCK
Sailing Date:	CELEBRATION 04/17/99
Cabin Number:	U39
Guest:	MS BARBARA DORAN

ITEMIZED CHARGES

Cruise Amount	$As Agreed
Air Supplement	$As Agreed
Packages/Transfers	$As Agreed
Prepaid Gratuities	$As Agreed
Port Charges	$As Agreed
Deviation Fees	$As Agreed
Administration Fees	$As Agreed
Federal Taxes/Fees	$As Agreed
Airport Fees	$As Agreed
Insurance	$As Agreed
Total	$As Agreed

IMPORTANT NOTICE TO GUESTS

THIS DOCUMENT IS A LEGALLY BINDING CONTRACT ISSUED BY CARRIER TO, AND ACCEPTED BY, GUEST SUBJECT TO THE IMPORTANT TERMS AND CONDITIONS APPEARING ON THE FOLLOWING SIX PAGES. THE PROVISIONS OF THE FOLLOWING PAGES OF THIS

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CONTRACT ARE INCORPORATED AS THOUGH FULLY REWRITTEN ON THE FACE OF THIS CONTRACT.

NOTICE: THE ATTENTION OF GUEST IS ESPECIALLY DIRECTED TO CLAUSES 1, 3, 5, 6, 7, 8, 9, 11, 12, 14, 16, 21, 22 AND 24, WHICH CONTAIN IMPORTANT LIMITATIONS ON THE RIGHTS OF GUEST TO ASSERT CLAIMS AGAINST CARRIER, THE VESSEL OR ANY OF THEIR AGENTS OF EMPLOYEES.

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Airfare Taxes/Fees are charges imposed or sanctioned by the U.S. Government as part of the air transportation arranged by Carnival. These include all applicable charges for Passenger Facility Charges, Security Surcharges, Fuel Surcharges, International Departure Tax, Customs User Fee Immigration Fee and Agricultural Inspection Fee.

Government Taxes/Fees are charges imposed by the U.S. Government relating to the cruise portion of your Carnival vacation. Your charges are as follows:

International Departure Tax	$3.00
Customs User Fee	$6.50
Immigration Fee	$6.00

IMPORTANT TERMS AND CONDITIONS
OF CONTRACT - READ CAREFULLY

In Consideration of the receipt in full of the cruise fare, Carrier agrees to transport Guest on the Vessel and above specified voyage on the following terms and conditions:

1. (a) Whenever the word "Carrier" is used in this Contract it shall mean and include, jointly an severally, the Vessel, its owners, operators, charterers and tenders. The term "Guest" shall include, the plural where appropriate, and all persons engaging to and/or traveling under this Contract including his heirs and Representatives. The masculine includes the feminine. "Guest" shall have the same meaning as "Passenger" in this Contract.

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(b) All rights, exemptions from liability, defenses and immunities of the Carrier under this Contract shall also inure to the benefit of the Carriers servants, agents and independent contractors who shall have no liability to the guest, either in contract or in tort, which is greater than or different from that of the Carrier. For the purpose of this clause, the Carrier shall be deemed to be acting as agent and trustee for such servants, agents and independent contractors, and all such persons shall to this extent be or be deemed to be parties to this contract.

2. This ticket is valid only for the person or persons named hereon as the guest or guests and cannot be transferred without the Carrier's consent written hereon. Passage money shall be deemed to be earned when paid and not refundable except as stated in Carrier's brochure applicable to the voyage under Cancellation Policy.

3. (a) The acceptance of this ticket by the person or persons named hereon as guests shall be deemed to be an acceptance and agreement by each of them of all of the terms and conditions of this Passage Contract Ticket.

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(b) The guest admits a full understanding of the character of the Vessel and assumes all risks incident to travel and transportation and handling of guests and cargo. The Vessel may or may not carry a ship's physician at the election of the Carrier. The fare includes full board, ordinary ship's food during the voyage, but no spirits, wine, beer or mineral waters.

4. The guest shall be liable to and shall reimburse the Carrier for all damages to the Vessel, its furnishings and equipment, or any property of the Carrier caused directly or indirectly in whole or in part by any willful or negligent act or omission on the part of the guest; and the guest shall indemnify the Carrier and the Vessel, their servants and agents against liability which the Carrier or the Vessel or such servants or agents may incur toward any person or company or Government for any damage to property, personal injury or death caused directly or indirectly, in whole or in part, by any willful negligent act or omission on the part of the guest.

5. Any travel agent utilized by the guest in connection with this contract is solely the agent of the guest and not the Carrier. Carrier cannot be responsible for the financial condition or integrity of any travel agent utilized by guest in connection with this contract. In the event that an agent shall fail to remit to Carrier any monies paid to the agent by guest, guest shall be and remain liable for the fare due to Carrier, regardless of whether liability is asserted before or after embarkation. Any refund made by Carrier to an agent on behalf of guest shall be deemed payment to guest,

whether or not the monies are delivered by the agent to guest.

6. If the Vessel carries a physician, nurse, masseuse, barber, hair dresser or manicurist, it is done solely for the convenience of the guest and any such person in dealing with the guest is not and shall not be considered in any respect whatsoever, as the employee, servant or agent of the Carrier and the Carrier shall not be liable for any act or omission of such person or those under his order or assisting him with respect to treatment, advice of care of any kind given to any guest.

The physician, nurse, masseuse, barber, hair dresser or manicurist are each independent contractors and shall be entitled to make a proper charge for any service performed with respect to a guest and the Carrier shall not be concerned in any way whatsoever in any such arrangement. The guest agrees to indemnify the Carrier in the event the Carrier elects to pay the cost of emergency medical care, including transportation thereof.

7. The Carrier shall not be liable for any claims whatsoever of the guest unless full particulars thereof in writing be given to the Carrier or their agents within 185 days after the guest shall be landed from the Vessel or in the case the Voyage is abandoned within 185 days thereafter. Suit to recover any claim shall not be maintainable in any event unless commenced within one year after the date of the loss, injury or death.

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8. It is agreed by and between the Guest and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this Contract shall be litigated, if at all, in and before a Court located in the State of Florida, U.S.A. to the exclusion of the Courts of any other state or country.

9. Shore excursions in the various ports are operated by independent tour operators. The Carrier, in arranging for the service called for by all shore feature coupons or shore excursion tickets, acts only as agent for the holder thereof and assumes no responsibility and in no event shall be liable for any loss, damage, injury or delay to or of said person and/or baggage, property or effect in connection with said services, nor does Carrier guarantee the performance of any such service. All arrangements made for or by the Guest for shoreside excursion, transportation or activities are at the Guests risk.

10. Federal law prohibits travel between two contiguous U.S. ports. Any Guest who insists on departing in this situation, accepts responsibility for any resulting penalties (e.g. you cannot board the ship in New Orleans and debark in Tampa).

11. Each fully paid adult Guest will be allowed an unlimited amount of baggage free to charge. Baggage means only trunks, valises, satchels, bags, hangers and bundles with their contents consisting of only such wearing apparel, toilet articles and similar personal effects as are necessary and appropriate for the purpose of the journey.

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12. No tools of trade, household goods, presents and/or property of others, jewelry, money, cameras, documents, valuables of any description including but not limited to such articles as are described in Section 4281 Revised Statute of the U.S.A. (46 USCA § 181) shall be carried except under and subject to the terms of a special written contract or Bill of Lading entered into with the Carrier prior to embarkation upon application of the Guest and the Guest hereby warrants that no such articles are contained in any receptacle or container presented by him as baggage hereunder, and if any such article or articles are shipped and the Guest's baggage in breach of this warranty no liability for negligence, gross or ordinary, shall attach to the Carrier for any loss or damage thereto.

13. (a) During the voyage, money, jewelry or other valuables must not be left lying about the Vessel or cabin. Money, jewelry or other valuables may be deposited in safe-deposit boxes in the Vessel's Pursers Office. The making of such a deposit, however shall not increase Carrier's liability as provided below in this Clause 12. Carrier shall not be liable for: (1) Guest's failure to comply with the requirements set forth in Clauses 10, 11 and 12 herein; (2) any loss or damage before baggage comes into Carrier's actual custody on board at the port of

embarkation or after baggage leaves Carrier's actual custody on board at the port of debarkation, including, without limitation, loss by airlines; (3) any loss or damage of baggage while not in the care of Carrier; (4) damage due to wear, tear or normal usage; or (5) any loss or damage of perishable items, medicine, liquor, cash, securities or other financial instruments.

(b) It is stipulated and agreed that the aggregate value of each Guest's property under the adult ticket does not exceed $100.00 (half ticket: $50.00) ($500.00 if deposited in the Vessel's safe-deposit boxes) and any liability of the Carrier for any cause whatsoever with respect to said property shall not exceed such sum, unless the Guest shall in writing, delivered to the Carrier, prior to embarkation, declare the true value thereof and pay to the Carrier prior to embarkation a sum equal to 5% of the excess of such value. If Carrier shall be held liable for the loss of or damage to Guest's baggage it is agreed that such liability shall not exceed the lesser of: (1) the actual cash value, or (2) value declared in the manner above provided (U.S. $100 if no such declaration has been made), (3) $500 if deposited in the Vessel's safe-deposit boxes. Declared value amounts to be proportionately reduced in any case where less than all of Guest's baggage is lost, delayed or rendered unusable due to damage. In no event shall the Carrier be liable to pay any compensation if the nature or value of the property has been misrepresented to it.

14. The Vessel shall be entitled to leave and enter ports with or without pilots or tugs, to tow and assist other vessels in

any circumstances to return to or enter any port at the Master's discretion and for any purpose and to deviate in any direction or for any purpose from the direct or usual course, all such deviations being considered as forming part of and included in the proposed voyage.

15. If the performance of the proposed voyage is hindered or prevented (of in the opinion of the Carrier or the Master is likely to be hindered or prevented) by war, hostilities, blockage, ice, labor conflicts, strikes on board or ashore, Restraint of Princes, Rulers and People, breakdown of the Vessel, congestion, docking difficulties, or any other cause whatsoever or if the Carrier or the Master considers that for any reason whatsoever, proceeding to, attempting to enter, or entering or remaining at the port of Guest's destination may expose the Vessel to risk or loss or damage or be likely to delay her, the Guest and his baggage may be landed at the port of embarkation or at any port or place at which the Vessel may call when the responsibility of the Carrier shall cease and this contract shall be deemed to have been fully performed, or if the Guest has not embarked the Carrier may cancel the proposed voyage without liability to refund passage money or fares paid in advance.

Appendix C

16. The Carrier and the Master shall have liberty to comply with any orders, recommendations or directions whatsoever given by the Government of any nation or by any Department thereof or by any person acting or purporting to act with the authority of such Government or Department by any Committee or person having under the terms of the War Risks

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Insurance on the Vessel the right to give such orders, recommendations or directions, and if by reason of, and in compliance with any such orders, recommendations or directions anything is done or is not done the same shall not be deemed a deviation or a breach of this contract. Disembarkation of any Guest or discharge of his baggage in accordance with such orders, recommendations or directions shall constitute due and proper fulfillment of the obligation of the Carrier under this Contract.

17. (a) The Carrier shall not be liable to make any refund to Guests in respect of lost tickets or in respect of tickets wholly or partly not used by a Guest.

(b) If for any reason whatsoever the Guest is refused permission to land at the port of disembarkation or such other ports as is provided for in Clauses 14 and 15 hereof, the Guest and his baggage may be landed at any port or place at which the Vessel calls or be carried back to the port of embarkation and shall pay the Carrier full fare according to its tariff in use at such time for such further carriage, which shall be upon the terms herein contained.

18. The Carrier and the Vessel shall have a lien upon all baggage, money and other property whatsoever accompanying the Guest and the right to sell the same by public auction or otherwise for all sums whatsoever due from the Guest under this Contract and for the costs and expenses of enforcing such lien and of such sale.

19. The Guest or if a minor his parent or guardian shall be

liable to the Carrier and to Master for any fines or penalties imposed on the Carrier by the authorities for his failure to observe or comply with local requirements in respect of immigration. Customs and Excise or any other Government regulations whatsoever.

Carrier shall refuse boarding to any Guest under the age of twenty-one unless: (1) the Guest is traveling in the same cabin with an individual twenty-five years or older; (2) traveling in the same cabin with their spouse; or (3) traveling with a parent in an accompanying cabin. Proof of age and where applicable, proof of marriage, is required. Carrier shall not be liable to make any refunds or for any damages with respect to any Guest's failure to provide proper proof of age or marriage or otherwise comply with this provision.

20. No Guest shall be allowed to bring on board the Vessel live animals, Weapons, Firearms, Ammunition, Explosives or other dangerous goods without written permission from the Carrier.

21. The Carrier shall have liberty without previous notice to cancel at the port of embarkation or at any port this Contract and shall thereupon return to the Guest, if the Contract is cancelled at the port of embarkation, his passage money or, if the Contract is cancelled later, a proportionate part thereof.

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22. (a) The Guest warrants that he and those traveling with him are physically fit at the time of embarkation. Carrier reserves the right to require that

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any Guest who is not self-sufficient travel with a companion who shall take the responsibility for any assistance needed during the voyage and in case of emergency. The Carrier and Master each reserves the right to refuse passage to anyone whose physical or mental condition would be considered a risk to his own well-being or that of any other Guest.

(b) The Guest agrees that the Carrier shall be held harmless from and not be liable for any loss or injury (to the extent not caused by the negligence of Carrier, its servants or agents) or deterioration or exacerbation of any medical condition to which he is subject, whether known or unknown, disclosed or undisclosed, which arises from, is caused by and/or is directly related to said medical condition.

22. Should the Vessel deviate from its course due to Guest's negligence, said Guest or his estate shall be liable for any related costs incurred.

23. The Carrier reserves the right to increase published fares without prior notice. In the event of an increase, the Guest has the option of accepting the increased fare or cancelling reservations without penalty.

24. In addition to all the restrictions and exemptions from liability provided in this Contract, the Carrier shall have the benefit of all Statutes of the United States of America providing for limitation and exoneration from liability and the procedures provided thereby, including but not limited

to Sections 4282, 4282A, 4283, 4284, 4285 and 4286 of the Revised Statues of the United States of America (46 USCA § Sections 183, 183, 183b, 184, 185 and 186); nothing in this Contract is intended to nor shall it operate to limit or deprive the Carrier of any such statutory limitation of or exoneration from liability.

25. Should any provision of this Contract be contrary to or invalid by virtue of the law of nay jurisdiction or be so held by a court of competent jurisdiction, such provision shall be deemed to be severed from the Contract and of no effect and all remaining provisions herein shall be in full force and effect and constitute the Contract of Carriage.

26. A cancellation occurs when a cabin reservation is released and not simultaneously rebooked on the same sailing. This may result in a cancellation charge being assessed as follows.

DAYS PRIOR TO DEPARTURE	CANCELLATION CHARGE
70 TO 30 days	$100 (per person)
29 to 4 days	$200 (per person)
3 days or less	No Refund

Reservations will be held until 30 minutes prior to departure. No refunds will be made in the event of "no shows", cancellations received the day of sailing, or after the start of the cruise. We recommend the purchase of trip cancellation insurance from your travel agent.

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28. Carrier and/or its promotional partners have the exclusive right to include photographic, video and other visual portrayals of Guest in any pictorial medium of any nature whatsoever for the purpose of trade, advertising, sales, publicity or otherwise, without compensation to Guest, and all rights, title and interest herein (including all worldwide copyrights therein) shall be carrier's sole property, free from any claims by Guest or any person deriving any rights or interest from Guest.

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APPENDIX D – EXCERPTS FROM CARNIVAL WELCOME ABOARD BROCHURE[2]

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Conditions of Contract

If you look at the cover of your ticket booklet, you will see an "Important Notice to Guests." This notice directs your attention to the terms and conditions of your contract. It is important to read this and become acquainted with the specific conditions and limitations of your passage.

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[2] Authenticated by Affidavit of Askounis, ¶ 3.